LEGISLATION CONCERNING THE RAILROAD SERVICE[1]

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I am asked to state how the public regards the controversy that has arisen over methods of settling disputes between the railroad companies and their employes. While I think I can speak without bias or partisanship, I of course recognize it to be impossible for any one individual to represent the views of the general public on a complicated controversial question such as the one under consideration. Indeed, it is probable that the public as a whole has reached no single definite conclusion. Although I shall venture to state what I think is the belief of the public concerning the principles and methods that should be followed in deciding controversies between the men and the managers in the railroad service, it will be understood that in advocating the adoption of remedial measures I can represent the views of only one member of the public.

It will at least afford a starting point and may assist in simplifying the problem under discussion to begin with a statement of certain principles upon which there may be presumed to be a general agreement on the part of the public.

I am sure the public is of the opinion that for all classes of railroad employes the hours of labor ought to be reasonable, and the wages fair and generous. Organized effort on the part of the employes to secure fair wages and reasonable hours of labor has always met with sympathy on the part of the public.

The railroad companies, it is further agreed, should be permitted to make such charges for their services and to earn such revenues as may be needed to enable the carriers to pay good wages for reasonable hours of service. Individual shippers and local communities, under the stress of competition, will naturally oppose increases in railroad rates and will press for a reduction of transportation charges; and, indeed, the country as a whole, represented by its state and federal railroad commissions, will inquire into the reasonableness of

[1] An address delivered before the Economic Club of Philadelphia, November 24, 1916.

existing and proposed railroad charges; but public opinion as a whole will justify the commissions in allowing the railroads incomes large enough to enable them to deal generously with their employes.

A third principle concerning which the people of the United States are unanimous is that the interests of the public are superior to the interests of either the carriers or their employes. The public intends to deal justly with railroad managers and with their employes. It expects justice in return; and will insist that the welfare of the hundred million people of the United States shall be placed above any temporary advantage or need of either employes or carriers.

It is evident to the public that the transportation service must not be interrupted by any controversy between employers and employed in the railroad service. The public, represented by the federal government, can permit neither the railroad managers nor their employes to stop the service of railroad transportation. Not only the welfare but the very life of society is at stake. The railroads must run, else people will starve, anarchy and violence will displace orderly government, and there will ensue what President Wilson has termed a "tragical national calamity." It should be understood that whatever happens the trains must run, and that all the power of the government of the United States will, if necessary, be exercised to that end.

It follows logically from the foregoing conclusion that disputes between railroad companies and their employes must be settled by mediation or arbitration and not by any action of employers or employes that will stop transportation. To quote the words of President Wilson, "there should be firm adherence . . . . to the principle of arbitration in industrial disputes." It is necessary and desirable, as the President states, that the country "take counsel . . . . with regard to the best means . . . . of securing calm and fair arbitration of all industrial disputes in the days to come." Means and methods are appropriate subjects of debate, but the debate should be only as to means and not as to the necessity of the settlement of controversies without interruption of the railroad service.

The reasons for this will be stated presently, but before stating them I will venture the opinion that the majority of the public is

agreed upon one other principle, that is, that in so far as possible wages and hours of labor should be adjusted by negotiations between employes and employers, that wages, outside of the government service, ought not to be fixed by statute, and that the hours of labor should be established by law only when the safety and health of society and the protection of the weak against the strong make such statutory action clearly necessary. It is, I think, the belief of a majority of the American people that this principle is fundamentally sound; that it is in the interest of the workingman and is promotive of social welfare and progress that men in their organized capacity should continue to negotiate with their employers as to wages and conditions of service. This view, I take it, is held by most leaders of organized labor as well as by other men of responsibility.

The application of the principle that wages and hours of labor should be adjusted by negotiation between employes and employers instead of by statute necessarily involves the broad question of the wisdom or unwisdom of establishing by law a general eight-hour labor day. Many zealous friends of labor are seeking the enactment of laws limiting labor to eight hours a day. The effect of such legislation upon the present and future welfare of wage laborers should be carefully considered. The men who work for wages have, possibly, made more progress in the United States than in any other country. This progress has been greatly promoted by the organization of labor and by negotiation between organized labor and its employers. It is now proposed to fix hours of labor rigidly by law rather than to adjust them by negotiation between the parties in interest. The significance and consequences of this change should be carefully weighed.

The best method to settle differences that arise between employers and employes is by direct negotiations carried on by representatives of the parties in interest. The next best means of disposing of a dispute is by mediation and conciliation by responsible government officials who act as the representatives of the public. When an adjustment is finally made as a result of mediation, neither party feels that he has sacrificed his vital interests. Arbitration is the next best method of adjusting labor troubles For many years arbitration has been successfully employed in the adjustment of controversies between the railroads and their employes. The present agency for the peaceful settlement of railway labor

disputes can doubtless be improved by making such changes as experience shows to be desirable; but nothing in past experience indicates a failure of arbitration.

The advantages of arbitration were well illustrated in the adjustment of a disagreement that arose between the Southern Pacific Company and its telegraphers represented by the Order of Railroad Telegraphers. The trouble arose at the close of 1906. For a number of years the relations of the railroad company and its telegraphers had been determined by a schedule or agreement. The time came when the employes felt that their wages should be increased and that Sunday labor should be limited to five hours. The employers also desired certain changes made in the "schedule" or agreement with the telegraphers. Under the agreement that had been in force for some time the company was limited to the seniority rule of appointment and promotion of telegraphers and was thus prevented from introducing new blood into the service. The agreement also required the company to select its station agents from the telegraphers having seniority of service, and the company wished greater freedom in the selection of the station agents. The company and the employes, being unable to adjust their differences, agreed to submit the controversy to arbitration. This was the second arbitration under the Erdman Act and I was chosen by the government as the third arbitrator and acted as chairman of the board. The award that resulted from the arbitration gave the employes half-time on Sunday, or, in lieu thereof, a leave of absence on full pay for twenty-six days per annum. The employes were also given an increase in wages of seven and one-half per cent. The company was relieved from the limitations of the seniority rule by which their selection of telegraphers had been restricted, and the company was also permitted to select men who were not telegraphers to serve as agents at the more important stations. Although certain features of the award were contested in the courts, the controversy was, in the end, adjusted practically in accordance with the award of the arbitration board and in a manner that was apparently acceptable to both sides.

There can be no doubt that the public believes that all disputes between railroad employes and employers that cannot be settled by negotiation or conciliation should be decided by arbitration. The public believes arbitration to be right in principle, and that ap-

propriate measures should be taken as soon as practicable to carry out the principle in practice. This may ultimately require the adoption of laws making obligatory the arbitration of controversies in the railway service. Compulsory arbitration may not be necessary in industrial labor disputes, but in the case of the railroads, where an interruption to the service is intolerable, only one or the other of two courses of action seems possible.—

One course is to leave arbitration voluntary and optional, as it is at the present time, in which case it should be understood that the government will and must take whatever measures are necessary to prevent either party to a controversy from stopping the service of transportation. The other course, and the one that will probably be adopted as the final solution of the problem, is to make arbitration compulsory in case mediation and conciliation by public officials fail to bring the contestants to a basis of agreement.

During the coming months the country is to give this question serious consideration. Whether the decision will be in favor of compulsory arbitration or in favor of compulsory investigation as a first practicable step towards the final goal it is too early to predict. The present thought of the country regarding the question was admirably stated by Senator Newlands, the chairman of the joint Congressional committee on transportation, which, on the twentieth of November, 1916, began an elaborate investigation into the whole subject of the relationship of the government to the railroads. In outlining the investigation which the committee proposes to make, Senator Newlands stated, among other things:

> As to wages and the hours of labor, it is very evident that under present conditions the only ultimate method of settling a difficulty between a railroad and its employes is a resort to force. And the question is whether a nation pretending to some degree of civilization, which has eliminated the doctrine of force from application to controversies between man and man, and which furnishes judicial tribunals for the settlement of these controversies, and which is now and has been for years endeavoring internationally to secure a system under which the nations of the earth will create similar tribunals for the adjustment of international disputes without resort to force—whether such a civilized nation can be content to perpetuate the existing condition of things is a subject of profound thought.
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> It would seem to be our highest duty to meet this condition and . . . . to create some system under which a resort to force, the most barbaric and brutal of processes, can be avoided for the settlement of disputes between great employers and vast bodies of employes.

The most important statement that has thus far been made concerning methods to be adopted to give practical effect to the principle of arbitration as a means of settling disputes between railroad employes and managers is the proposal which the President embodied in the legislative program which he laid before Congress on the twenty-ninth of last August.[2] The President asked Congress to adopt

an amendment of the existing federal statute which provides for the mediation, conciliation and arbitration of such controversies as the present by adding to it a

[2] Since this paper was written, the President has presented his annual message to Congress and has renewed the recommendations previously made. In the annual message the President urged upon Congress the necessity for "the provision for full public investigation and assessment of industrial disputes, and the grant to the Executive of the power to control and operate the railways when necessary in time of war or other like public necessity."

In support of this recommendation, the President argued that:

"The country cannot and should not consent to remain any longer exposed to profound industrial disturbances for lack of additional means of arbitration and conciliation which the Congress can easily and promptly supply. And all will agree that there must be no doubt as to the power of the Executive to make immediate and uninterrupted use of the railroads for the concentration of the military forces of the nation wherever they are needed and whenever they are needed.

"I would hesitate to recommend, and I dare say the Congress would hesitate to act upon the suggestion should I make it, that any man in any occupation should be obliged by law to continue in an employment which he desired to leave. To pass a law which forbade or prevented the individual workman to leave his work before receiving the approval of society in doing so would be to adopt a new principle into our jurisprudence which I take it for granted we are not prepared to introduce. But the proposal that the operation of the railways of the country shall be stopped or interrupted by the concerted action of organized bodies of men until a public investigation shall have been instituted which shall make the whole question at issue plain for the judgment of the opinion of the nation is not to propose any such principle. It is based upon the very different principle that the concerted action of powerful bodies of men shall not be permitted to stop the industrial processes of the nation, at any rate before the nation shall have had an opportunity to acquaint itself with the merits of the case as between employe and employer, time to form its opinion upon an impartial statement of the merits, and opportunity to consider all practicable means of conciliation or arbitration. I can see nothing in that proposition but the justifiable safeguarding by society of the necessary processes of its very life. There is nothing arbitrary or unjust in it unless it be arbitrarily and unjustly done. It can and should be done with a full and scrupulous regard for the interests and liberties of all concerned as well as for the permanent interests of society itself."

provision that in case the methods of accommodation now provided for should fail, a full public investigation of the merits of every such dispute shall be instituted and completed before a strike or lockout may lawfully be attempted.

This proposal of the President contains the essential principle of the Canadian Industrial Disputes Act which applies not only to railroads but to all public utilities and to the coal and metal mining industries. As stated in a bulletin published by the United States Bureau of Labor:

In these industries and occupations [in Canada] it is unlawful for employers to lock out their workmen or for employes to strike until an investigation of the causes of the dispute has been made by a government board appointed for this particular case and the board's report has been published. After the investigation is completed and the report made, either party may refuse to accept the findings and start a lockout or a strike. The investigating board usually tries by conciliation to bring the parties to an agreement, so that the functions of the board considerably exceed those of a body appointed solely to procure information.

It was evidently the thought of the President that a full public investigation of the merits of a dispute between railroad managers and employes would disclose a basis of settlement that would be so manifestly just as to cause both parties to accept the findings of the board of investigation. That might uniformly be the result; but such a happy settlement of controversies might not always be accomplished; and there would still be the danger of a strike or lockout.

The President realized that a law providing for compulsory investigation of railway disputes before a strike or lockout can be lawfully declared must also provide against an interruption of the service of transportation, and he recommended as a part of his legislative program—

The lodgment in the hands of the executive of the power, in case of military necessity, to take control of such portions and such rolling stock of the railways of the country as may be required for military use, and to operate them for military purposes with authority to draft into the military service of the United States such train crews and administrative officials as the circumstances require for their safe and efficient use.

To one who views the question from the standpoint of the public interests, it would seem as logical and as imperative that the executive branch of the government should have the power to take over and run the railroads, in order thereby to prevent violence,

disorder and starvation as that the government should be authorized to operate railroads "in the case of military necessity" and "as a matter of national defense." It is possible that the President included among "military purposes" such steps as might be necessary to prevent the tying up of the railroads and the consequent public disorder and starvation; but the President took pains to state that "the power conferred in this matter should be carefully and explicitly limited to cases of military necessity."[3]

Should the United States decide to adopt compulsory arbitration it will not mean experimenting with a new and untried method of enforcing the peaceful settlement of railway labor disputes. Compulsory arbitration has been in successful operation for a number of years in New Zealand, New South Wales, Western Australia, and in the Australian Commonwealth. The purposes of the Australian Commonwealth conciliation and arbitration acts of 1904, and subsequent years, as set forth in the acts themselves, are:

> To prevent strikes and lockouts; to constitute a federal court of arbitration with power to provide for the amicable settlement of disputes; and failing of such settlement to make an award; to make and enforce agreements between employers and employes; to enable states to refer to it; and to encourage organizations of employers and employes, who may approach the court with disputes.[4]

According to the testimony of two impartial Australian writers:

> On the whole, compulsory arbitration in Australia has been an undoubted success in so far as results can be judged during the comparatively short time the system has been in operation. In New Zealand, where it has been in vogue longer than anywhere else, the success has been unqualified. True, the strength of the system has never been tested. There has been no decisive struggle between masters and men. But the absence of such a struggle is in itself a sign of efficiency, and of the satisfaction given to both the factors in industrial prosperity. . . . . There can be no doubt that compulsory arbitration with its concomitant awards rests on a sound basis.[5]

If, as I have ventured to assert, the public is definitely of the opinion that the public interests are above the interests of the railroad managers or their employes, that disputes in the railroad service, when negotiation and conciliation shall fail, must be settled by peace-

[3] The language subsequently used by the President in his annual message was "the grant to the Executive of the power to control and operate the railways in time of war *or other like public necessity.*"

[4] *Annals of American Academy*, Vol. 37, p. 213.

[5] *Ibid.*, 220, 221.

ful methods, and that the public cannot permit strikes or lockouts to interrupt transportation, then we must conclude that the public will necessarily give the President the power to keep the railroads running. This would be a power of great magnitude; but no greater than, indeed not so great as, the military power of the President.

The mere possession of great power is often sufficient to make its exercise unnecessary. It is altogether probable that, if those who operate the railroads realize that the government can and will, whenever necessary, take over and manage the railroads, they will take no action to prevent the railroads from operating. The employers and the employes in the railroad service owe it to the public to adopt means of settling their disputes without bringing universal distress upon the country; the public, acting through the government, must insist upon the peaceful adjustment of railroad controversies and must adopt the measures necessary to accomplish that end.